

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3321 OF 2018

Shaikh Gulam Dashtagir Shaikh
Gulam Hussain, Age 43 years,
Occu. Business, R/o Mominpura,
Dayra Road, Beed, Taluka and
District Beed

... **APPLICANT**

VERSUS

1. The State of Maharashtra
(Copy to be served on P.P.,
High Court of Judicature of
Bombay, Bench at Aurangabad)
2. Shahnaj Jalal Shaikh,
Age 58 years, Occu. Household
R/o Room No.3, Umer Tower Apartment,
Zamzam Colony, Beed, Taluka and
District Beed.

... **RESPONDENTS**

.....
Shri H.V. Tungar, Advocate for applicant
Shri S.B. Joshi, A.P.P. for respondent No.1/ State
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**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

DATED : 11th February, 2019.

JUDGMENT (PER R.G. AVACHAT, J.) :

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the

parties.

2. Heard Shri H.V. Tungar, learned counsel for the applicant. Also heard Shri S.B. Joshi, learned A.P.P. appearing for the respondent No.1/ State. None appeared for respondent No.2.

3. This is an application under Section 482 of the Criminal Procedure Code. The applicant is accused No.5 in R.C.C. No.464/2015, arising out of C.R.No.83/2015, registered with Beed City Police Station, for offence punishable under Sections 364-A, 120-B and 506 read with Section 34 of the Indian Penal Code. By the present application, the applicant seeks quashment of the proceedings of R.C.C. No.464/2015, pending before the Court of Judicial Magistrate, First Class, Beed.

4. Learned counsel for the applicant would submit that, the name of the applicant does not figure in the F.I.R. Perusal of the statement of Shaikh Jahangir, the victim, would indicate the applicant to have not played any overt act in commission of the alleged offence nor his tacit involvement is surfaced. According to learned counsel, allowing to continue the proceedings of R.C.C. No.464/2015 against the applicant would be an abuse of process of law. The learned counsel ultimately urged for the relief in terms of prayer clause (B) of the application.

5. Shri S.B. Joshi, the learned A.P.P., took us through the relevant police papers of the case to ultimately submit that the name of the applicant has figured in the case. The proceedings of R.C.C. No.464/2015, therefore, cannot be quashed.

6. The F.I.R. has been lodged by Smt. Shahenaj Jalal Shaikh on 2.5.2015. It has been averred in the F.I.R. that the husband of the first informant was no more. She had two sons. One of them also passed away in February 2015. The first informant along with her son Jahangir (victim) and three of her four daughters, reside together at Zamzam Colony, Beed. The first informant's husband had purchased 7 acres of land in the name of son Jahangir. Jahangir sold the said land for Rs.22,00,000/- two months before registration of the F.I.R. Jahangir thereafter started doing plotting business simultaneously with taking education in Commerce stream.

7. It is further averred in the F.I.R. that on 2.5.2015, Jahangir received phone calls of Shahebaz (accused No.3). He also received phone calls of one Gujjarkhan (accused No.1), asking him to meet him in connection with plotting business. The first informant claimed to have advised her son not to meet Gujjarkhan as he was not a good man. It is further averred in the

F.I.R. that Jahangir left the house by 3.00 p.m. on 2.5.2015. He did not return home within reasonable time. The first informant, therefore, called him on cell phone. He, however, disconnected the call. Harun, nephew of the first informant, therefore, called Jahangir, who, in turn told him to have been kidnapped. Some other persons came on the call to inform Harun that he will have to pay Rs.1 Crore to the caller for release of Jahangir. The first informant, therefore, lodged the report against Gujjarkhan, Shahebaz and other unknown persons.

8. Perusal of the police papers would indicate that, Jahangir was rescued on 4.5.2015. His statement has been recorded on the same day. It is in his statement that on 2.5.2015, he received a phone call of Gujjarkhan (accused No.1), asking him to meet him to see plotting. In the afternoon, Jahangir went to Balepeer. He received phone call of Shahebaz (accused No.3). He called Jahangir to Sana Function Hall. Jahangir, therefore, went there. Jahangir thereafter came back home. Again at 3.30 p.m., Jahangir received a call from Shahebaz, asking him to accompany him for Aurangabad. After informing Farooq Shaikh, Jahangir went to Aman Lawns. Shahebaz was there with his Indigo Car. Jahangir took front seat in the car. Shehebaz took the Car towards Barshi Naka. At the Naka, two persons occupied back seat in the Car. Then Shahebaz took the Car towards

Mominpura. He then made a phone call to Dashtagir (applicant herein). Dashtagir (applicant) came in his CBZ Car. He was accompanied by one person. Shahebaz introduced Dashtagir to Jahangir. Dashtagir then told Jahangir to do plotting business as he was financially rich. Meanwhile, Shahebaz went aside and started talking with someone on cell phone. After a while, Shahebaz came. The applicant left the place. Shahebaz, others two and Jahangir then went in a Car towards Jalna Road.

9. Further averments in the police statement of Jahangir are not relevant so far as regards the applicant is concerned. True, the further averments would indicate that Jahangir was kidnapped and calls for ransom were made to his mother. Perusal of entire police papers would indicate that, averments therein against the applicants are only restricted to his role that he came in his CBZ Car to G.N. Function Hall in response to Shahebaz's call. Shahebaz then introduced Jahangir to Dashtagir. Dashtagir then asked Jahangir to continue to do plotting business as he (Jahangir) was financially rich. Meanwhile, Shahebaz went aside and talked with someone on cell phone. Applicant - Dashtagir gave his phone number to Jahangir and then he left.

10. The aforementioned acts of the applicant Dashtagir, even we accept as it is, by no stretch of imagination would lead

to observe him to have played any incriminating role in the alleged offence. The conduct of the applicant was usual. In this factual backdrop, if the proceedings of R.C.C. No.464/2015, arising out of C.R.No.83/2015, registered with Beed City Police Station, for offence punishable under Sections 364-A, 120-B and 506 read with Section 34 of the Indian Penal Code are allowed to continue against the applicant, it would necessarily amount to an abuse of process of the Court. The said proceedings, therefore, needs to be quashed as against the applicant is concerned.

11. The application, therefore, succeeds. Criminal Application is allowed in terms of prayer clause "B" to the extent of present applicant only and the same stands disposed of. Rule is made absolute in above terms.

**R.G. AVACHAT
JUDGE**

**S.S. SHINDE
JUDGE**

fmp/-